IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 364 of 2005

Reserved on: 24.11.2009

Date of decision: 9.12.2009

Punjab State Electricity Board .... Petitioner

Versus

H.P. State Environment Protection & Pollution Control Board. ... Respondents

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Coram :

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] Yes.

For the petitioner: Mr. Anand Sharma, Advocate.

For the respondents: Mr. Suneet Goel, Advocate, for respondent No. 1.
Mr. R.K. Bawa, Advocate General with Mr. Rajesh Manddhotra and Vikas Rathour, Deputy Advocate Generals, for respondent No. 2.

Per V.K. Ahuja, J.:

This judgment shall dispose of a civil writ petition filed by the petitioner/Board for issuance of appropriate directions to the respondents in the nature of certiorari for quashing of the proceedings initiated by the respondents as against the writ petitioner.

Briefly stated, the fact facts of the case as alleged by the writ petitioner are that the petitioner/Board was constituted after the Punjab Reorganization Act, 1966, was passed and the petitioner/Board is having its Hydel Project situated in Village

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Shanan at Jogindernagar. It was alleged that respondent No. 1 initially issued one notice through its Assistant Environment Engineer, Bilaspur, on 29.7.1998, wherein it was alleged that the petitioner's unit was running without the control of the State Pollution Control Board under the provisions of the Water and Air Acts. It was also alleged in the notice that the petitioner's unit was discharging sewage and the petitioner was directed to obtain sanction from the State Pollution Control Board. The petitioner filed a reply to the notice. Thereafter, no notice was issued by the respondent. However, on 20.9.1999, the respondent again issued a letter for renewal of consent for the year 1999-2000 under the provisions of the Water (Prevention & Control of Pollution) Act, 1974, (hereinafter to be referred as 'the Act of 1974') and Air (Prevention & Control of Pollution) Act, 1981, (hereinafter to be referred as 'the Act of 1981'). The petitioner was further allegedly threatened with legal action under Section 44 of the Air Act and 33 of the Water Act. The petitioner filed reply to the notice referring to the earlier reply given by them and that the provisions of the Air Act do not apply to the unit of the petitioner as there is no pollution. It was also alleged that the petitioner did not qualify to be defined as an industrial plant nor the same was emitting any solid, liquor or gaseous substance of any of its outlets.

It was further alleged by the petitioner that since he had been threatened under the provisions of the Act for legal action, he filed a statutory appeal under Section 31 of the Act of 1981 read with Section 28 of the Water (Prevention & Control of Pollution) Act, 1981, before the Appellate Authority constituted under the Air and Water Acts on 16.10.1999. It was alleged that these appeals were not listed for hearing before any Appellate Authority constituted under

the Act and the respondent was issuing similar notices to the petitioner to cause harassment to it and a subsequent notice was also issued on 5.4.2000, which was replied by the petitioner on 28.4.2000. It was further alleged that another notice was issued on 21.9.2004 and the respondent denied their knowledge regarding filing of the appeal by the present petitioner. In view of the fact that the petitioner was threatened with legal action vide latest notice dated 21.9.2004, he filed a reply and has prayed for a writ of certiorari for quashing of all the proceedings and action taken by the Pollution Board and they be also restrained from taking further action under the provisions of the Water Act.

Reply to the petition was filed by respondent No. 1, in which they pleaded that they are performing their statutory duty of enforcing/implementing the provisions of environmental laws i.e. Water (Prevention and Control of Pollution) Act, 1974 and other environmental legislations. It was submitted that these Acts do apply to the Electricity Board i.e. the petitioner. It was pleaded that the petitioner is not entitled to the relief claimed since number of opportunities were given to him to apply for sanction.

We have heard the learned counsel for the parties and have gone through the provisions of both these Acts and the record of the case.

The main grievance of the petitioner is in regard to the last notice dated 21.9.2004 (Annexure PN) issued to the Resident Engineer of the petitioner. The same is for renewal of consent for the year 2000-01 to 2004-05. It was alleged therein that the petitioner should supply the copy of the appeal filed by it since no copy has been supplied to the Board to take up the matter with the Appellate

Authority and no notice of hearing has been issued. It was further alleged that the petitioner has not applied for renewal of consent, whereas the petitioner has been applying for consent earlier. It was also alleged therein that operating the unit without consent is prohibited under Sections 25 and 21 of the Water and Air Acts and is punishable under Sections 44 and 37 of these Acts respectively.

The submissions made by the learned counsel for the petitioner were that no pollution is being caused from the discharge of the water from the unit and, therefore, no consent is required under the provisions of these Acts. On the other hand, the submissions made by the learned counsel for respondent No. 1 were that the petitioner has to obtain the consent from the Board and it is another question as to whether some pollution is being caused or not from the unit being operated by the petitioner. It was submitted that the said question will arise only once the petitioner had obtained the consent of the appropriate authority in this regard. Section 25 of 'the Act of 1974' reads as follows:-

> "25. Restrictions on new outlets and new discharges. –
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> [(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, -
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> (a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or
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> (b) bring into use any new or altered outlet for the discharge of sewage; or
>
> (c) begin to make any new discharge of sewage:
>
> Provided that a person in the process of taking any steps to establish any industry, operation or process

immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section(1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.]

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section(1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) ..... ."

Sub-section (4) lays down the conditions that may be imposed by the State Board while giving consent referred to in sub-section (1).

Under the provisions of Air (Prevention & Control of Pollution) Act, 1981, the State Board can issue directions as it may be necessary to take action for the prevention, control or abatement of air pollution.

Section 2(k) of 'the Act of 1974' reads as under:-

"trade effluent" includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any [industry operation or process, or treatment and disposal system], other than domestic sewage."

It is, therefore, clear from a bare perusal of the term "trade effluent" that it includes any liquid being discharged from any

premises used for carrying on any industry operation or process other than domestic sewage. The question as to whether the water being discharged from the unit is causing pollution or not is to be considered subsequently, but all such units are required to take the consent of the Board when they discharge such liquid including water. The consent is even necessary for the unit already in existence and they have to apply within a period of three months from the date of issuance of the notification for obtaining the consent of the Board.

The learned counsel for the petitioner had placed reliance upon the decision of a learned Single Judge of this Court in **Reliance Telecom Ltd.** Vs. **H.P. State Environment Protection and Pollution Control Board**, **Latest HLJ 2007 (HP) 1405**, wherein this question was considered by the learned Single Judge and it was observed that petitioner Telecom unit not generating any sewage is not required to procure consent of the Board to run the unit. In our considered opinion this judgement is not applicable to the facts of the case and the question as to what is trade effluent has not been decided in the said case. The learned Single Judge only held that since there is no discharge of any effluent the Water (Prevention and Control of Pollution) Act, 1974 will not apply.

The learned counsel for the petitioner had also relied upon a judgment of a learned Single Judge of this Court in **Cr. MMO No. 42 of 2002 titled Rakesh Nath and Another vs. H.P.State Environment Protection and Pollution Control Board,** decided on 31.12.2007. In the aforesaid case, the learned Single Judge held as follows:-

> *"Section 25 and 26 of the Water Act requires consent to be taken from the State Board only in the event if there is any discharge of sewage or trade effluent which is in the nature of polluting material.*

Admittedly, Section 25 and 26 would not be applicable to non-polluting material or a material which is not sewage or trade effluent. Undoubtedly, expression "polluting water" is wide and includes other contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid gaseous or solid substance etc. The consent is required not for the discharge of any non-polluting matter. In my view, dredging of the silt from Beas river and balancing reservoir and its ejection into Sukedi Khad does not fall within the meaning of polluting matter or trade effluent."

With great respect to the learned Single Judge, we do not feel that this is the correct interpretation of the legal provisions. Section 25 of the Act clearly lays down that consent of the Board is required where the industry is likely to discharge sewage or trade effluent into a stream or well or sewer on the land. Thus the section contemplates the discharge of two materials i.e. sewage and trade effluent. In the present case there will be no discharge of sewage from the plant itself but sewage will definitely be discharged from the residential colonies of the employees engaged in the project. Undisputedly, large number of employees are working on the project and their residences are in the colony premises. Even if the sewage is being treated in the septic-tanks the sewage is being discharged on the land. With regard to trade effluent the argument of the petitioner is that after generation of electricity only pure water is discharged and there is no discharge of any polluting material. Section 2(k) of the Act defines trade effluent to include any liquid, gaseous or solid substance discharged from the premises. Thus it is not the requirement of the Section 2(k) that the effluent should be a polluting material. If any liquid, gaseous or solid substance is being discharged from the premises then there is discharge of trade effluent within the meaning of Section 2(k). Therefore, in that event also consent is required under Section 25 and 26 of the Act. We

are, therefore, not in agreement with the view laid down by the learned Single Judge.

Accordingly, in view of the above discussion we are of the view that the application for consent was required to be filed by the petitioner, which has not been filed and as such, respondent No. 1 was within its right to issue notice to the petitioner. However, as has come during the course of arguments, the petitioner had allegedly filed an appeal and sent it to the office of respondent No. 1 but there was no Appellate Authority constituted, therefore, the matter was not decided for so many years. Keeping in view these facts, we are of the opinion that the petitioner should apply for consent from the date of issuance of notification under the provisions of the Act and the notices issued to the petitioner from the year 1999 till today, within two months. In view of the fact that he had been litigating the matter before this Court since 2005, we are of the opinion that the Board/respondent No. 1 shall waive the penalty, if any, for late application for consent and they shall only claim the normal fee from the petitioner as required under the provisions of the Act for obtaining consent of respondent No. 1.

In view of the above discussion, the writ petition is allowed partly accordingly in these terms.

(Deepak Gupta),
Judge

(V.K. Ahuja),
Judge

December 9, 2009
(BSS)